

PART 301—ELIGIBILITY, INVESTMENT RATE AND APPLICATION REQUIREMENTS

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AUTHORITY: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

Subpart A—General

§ 301.1 Overview of eligibility requirements.

In order to receive EDA Investment Assistance, an applicant and the Project proposed by the applicant must satisfy each of the following requirements:

(a) The applicant must be an Eligible Applicant as set forth in subpart B of this part;

(b) The Region in which the Project will be located must meet the economic distress criteria set forth in subpart C of this part;

(c) The sources of funding for the Project must fulfill the Investment Rate and Matching Share requirements set forth in subpart D of this part;

(d) EDA must select the Eligible Applicant's Project and the Eligible Applicant must satisfy the formal appli-

cation requirements set forth in subpart E of this part; and

(e) The Project must meet the general requirements set forth in part 302 (General Terms and Conditions for Investment Assistance) and the specific program requirements (as applicable) set forth in part 303 (Planning Investments and Comprehensive Economic Development Strategies), part 304 (Economic Development Districts), part 305 (Public Works and Economic Development Investments), part 306 (Training, Research and Technical Assistance Investments), or part 307 (Economic Adjustment Assistance Investments) of this chapter.

Subpart B—Applicant Eligibility

§ 301.2 Applicant eligibility.

(a) An Eligible Applicant for EDA Investment Assistance is defined in § 300.3 of this chapter.

(b) An Eligible Applicant that is a non-profit organization must include in its application for Investment Assistance a resolution passed by (or a letter signed by) an authorized representative of a general purpose political subdivision of a State, acknowledging that it is acting in cooperation with officials of such political subdivision. EDA may waive this cooperation requirement for certain Projects of a significant Regional or national scope under parts 306 or 307 of this chapter. See §§ 306.3(b), 306.6(b) and 307.5(b) of this chapter.

Subpart C—Economic Distress Criteria

§ 301.3 Economic distress levels.

(a) *Part 305 (Public Works and Economic Development Investments) and part 307 (Economic Adjustment Assistance Investments).* (1) Except as otherwise provided by this paragraph (a), for a Project to be eligible for Investment Assistance under parts 305 or 307 of this chapter, the Project must be located in a Region that, on the date EDA receives an application for Investment Assistance, is subject to one (or more) of the following economic distress criteria:

(i) An unemployment rate that is, for the most recent twenty-four (24) month

period for which data are available, at least one (1) percentage point greater than the national average unemployment rate;

(ii) Per capita income that is, for the most recent period for which data are available, eighty (80) percent or less of the national average per capita income; or

(iii) A Special Need, as determined by EDA.

(2) A Project located within an Economic Development District, which is located in a Region that does not meet the economic distress criteria of paragraph (a)(1) of this section, is also eligible for Investment Assistance under parts 305 or 307 of this chapter if EDA determines that the Project will be of “substantial direct benefit” to a geographic area within the District that meets the criteria of paragraph (a)(1) of this section. For this purpose, a Project provides a “substantial direct benefit” if it provides significant employment opportunities for unemployed, underemployed or low-income residents of the geographic area within the District.

(3) A Project located in a geographic area of poverty or high unemployment that meets the requirements of paragraph (a)(1) of this section, but which is located in a Region that overall does not meet the requirements of paragraph (a)(1) of this section, is eligible for Investment Assistance under parts 305 or 307 of this chapter without regard to political or other subdivisions or boundaries.

(4) EDA will determine the economic distress levels pursuant to this subsection at the time EDA receives an application for Investment Assistance as follows:

(i) For economic distress levels based upon the unemployment rate or per capita income requirements, EDA will base its determination upon the most recent American Community Survey (“ACS”) published by the U.S. Census Bureau for either: The Region where the Project will be located (paragraph (a)(1) of this section), the geographic area where substantial direct Project benefits will occur (paragraph (a)(2) of this section), or the geographic area of poverty or high unemployment (paragraph (a)(3) of this section), as applica-

ble. Where a recent ACS is not available, EDA will base its decision upon the most recent Federal data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs or any other Federal source determined by EDA to be appropriate). If no Federal data are available, an Eligible Applicant must submit to EDA the most recent data available from the State.

(ii) For economic distress based upon a Special Need, EDA will conduct the independent analysis it deems necessary under the facts and circumstances of a given case. Eligible Applicants are encouraged to submit reliable data substantiating their claim of a Special Need.

(b) *Part 303 (Planning Investments) and part 306 (Training, Research and Technical Assistance Investments)*. There are no minimum economic distress level requirements for Investment Assistance awarded to Projects under parts 303 or 306 of this chapter.

(c) *Part 304 (Economic Development Districts)*. For EDA to designate a Region as an Economic Development District under part 304 of this chapter, such Region must:

(1) Contain at least one (1) geographic area that fulfills the economic distress criteria set forth in paragraph (a)(1) of this section and is identified in an approved CEDS; and

(2) Meet the Regional eligibility requirements set forth in §304.1 of this chapter.

(d) EDA reserves the right to reject any documentation of Project eligibility that it determines is inaccurate or otherwise unreliable.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62865, Oct. 22, 2008]

Subpart D—Investment Rates and Matching Share Requirements

§ 301.4 Investment rates.

(a) *Minimum Investment Rate*. There is no minimum Investment Rate for a Project.

(b) *Maximum Investment Rate*—(1) *General rule*. Except as otherwise provided by this paragraph (b) or paragraph (c)

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of this section, the maximum EDA Investment Rate for all Projects shall, after the application of Table 1 in paragraph (b)(1)(ii) of this subsection, not exceed the sum of: (x) Fifty (50) percent, plus (y) up to an additional thirty (30) percent based on the relative needs of the Region in which the Project is located, as determined by EDA.

(i)(A) *Relative needs.* In determining the relative needs of the Region in which the Project is located, EDA will prioritize allocations of its Investment Assistance to ensure that the level of economic distress of a Region, rather than a preference for a specific geographic area or a specific type of economic distress, is the primary factor in allocating its Investment Assistance. In making this determination, EDA will take into consideration the following measures of economic distress:

(1) The severity of the unemployment rate and the duration of the unemployment in the Region;

(2) The per capita income levels and the extent of underemployment in the Region;

(3) The outmigration of population and the extent to which such outmigration is causing economic injury in the Region; and

(4) Such other factors as EDA deems relevant in determining the relative needs of the Region in which the Project is located.

(B) A Project is eligible for the maximum allowable Investment Rate as determined by EDA between the time EDA receives the application for Investment Assistance and the time that EDA awards Investment Assistance to the Project; however, the burden is on the Eligible Applicant to establish the relative needs of the Region in which the Project is located.

(ii) *Table 1.* Table 1 of this paragraph sets forth the maximum allowable Investment Rate for Projects located in Regions subject to certain levels of economic distress. In cases where Table 1 produces divergent results (*i.e.*, where Table 1 produces more than one (1) maximum allowable Investment Rate based on the Region's levels of economic distress), the higher Investment Rate produced by Table 1 shall be the maximum allowable Investment Rate for the Project.

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TABLE 1

| Projects located in regions in which: | Maximum allowable investment rates (percentage) |
|---|---|
| (A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or | 80 |
| (B) The per capita income is not more than 50% of the national average | 80 |
| (C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or | 70 |
| (D) The per capita income is not more than 60% of the national average | 70 |
| (E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or | 60 |
| (F) The per capita income is not more than 65% of the national average | 60 |
| (G) The twenty-four (24) month unemployment rate is at least 1 percentage point greater than the national average; or | 50 |
| (H) The per capita income is not more than 80% of the national average | 50 |

(2) *Projects subject to a Special Need.* EDA shall determine the maximum allowable Investment Rate for Projects subject to a Special Need (as determined by EDA pursuant to § 301.3(a)(1)(iii)) based on the actual or threatened overall economic situation of the Region in which the Project is located. However, unless the Project is eligible for a higher Investment Rate pursuant to paragraph (b)(5) of this section, the maximum allowable Investment Rate for any Project subject to a Special Need shall be eighty (80) percent.

(3) *Projects under part 303.*

(i) The minimum Investment Rate for Projects under part 303 of this chapter shall be fifty (50) percent.

(ii) Except as otherwise provided in paragraph (b)(3)(iii) of this section or in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 303 of this chapter shall be the maximum allowable Investment Rate set forth in Table 1 for the most economically distressed county or other equivalent political unit (*e.g.*, parish) within the Region. The maximum allowable Investment Rate shall not exceed eighty (80) percent.

(iii) In compelling circumstances, the Assistant Secretary may waive the application of the first sentence in paragraph (b)(3)(ii) of this section. The Assistant Secretary shall not delegate

the authority to grant a waiver under this paragraph.

(4) *Projects under part 306.* Except as otherwise provided in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. As specified in section 204(c)(3) of PWEDA, the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (100) percent where the Project:

(i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or

(ii) Will be of no or only incidental benefit to the Eligible Recipient.

(5) *Special Projects.* Table 2 of this paragraph sets forth the maximum allowable Investment Rate for certain special Projects as follows:

TABLE 2

| Projects | Maximum allowable investment rates (percentage) |
|--|---|
| Projects of Indian Tribes | 100 |
| Projects under part 307 of this chapter located in Presidentially-Declared Disaster areas for which EDA receives an application for Investment Assistance for post-disaster economic recovery efforts pursuant to a supplemental appropriation within eighteen (18) months of the date of such declaration | 100 |
| Projects of States or political subdivisions of States that the Assistant Secretary determines have exhausted their effective taxing and borrowing capacity, or Projects of non-profit organizations that the Assistant Secretary determines have exhausted their effective borrowing capacity | 100 |
| Projects under parts 305 or 307 that receive performance awards pursuant to § 308.2 of this chapter | 100 |
| Projects located in a District that receive planning performance awards pursuant to § 308.3 of this chapter | 100 |

(c) Federal Funding Opportunity notices may provide additional Investment Rate criteria and standards to ensure that the level of economic distress of a Region, rather than a preference for a geographic area or a specific type of economic distress, is the

primary factor in allocating Investment Assistance.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62865, Oct. 22, 2008; 75 FR 4262, Jan. 27, 2010]

§ 301.5 Matching share requirements.

The required Matching Share of a Project's eligible costs may consist of cash or In-Kind Contributions. In addition, the Eligible Applicant must show that the Matching Share is committed to the Project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Investment Assistance.

§ 301.6 Supplementary investment assistance.

(a) Pursuant to a request by an Eligible Applicant, EDA Investment Assistance may supplement grants awarded in another "designated Federal grant program," if the Eligible Applicant qualifies for financial assistance under such program, but is unable to provide the required non-Federal share because of the Eligible Applicant's economic situation. For purposes of this section, a "designated Federal grant program" means any Federal grant program that:

(1) Provides assistance in the construction or equipping of public works, public service or development facilities;

(2) Is designated by EDA as eligible for supplementary Investment Assistance under this section; and

(3) Assists Projects that are otherwise eligible for Investment Assistance and consistent with the Eligible Applicant's CEDS.

(b) For Projects located in Regions meeting the criteria of § 301.3(a), the EDA Investment Assistance, combined with funds from a designated Federal grant program, may be at the maximum allowable Investment Rate, even if the designated Federal grant program has a lower grant rate. If the designated Federal grant program has a grant rate higher than the maximum EDA Investment Rate, the combination of EDA Investment and other Federal funds may exceed the EDA Investment Rate; provided, the EDA share of

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total funding does not exceed the maximum allowable Investment Rate.

Subpart E—Application Requirements; Evaluation Criteria

§ 301.7 Investment Assistance application.

(a) The EDA Investment Assistance process begins with the submission of an Investment Assistance application. The *Application for Investment Assistance* (Form ED-900 or any successor form) may be obtained from EDA's Internet Web site at <http://www.eda.gov> or from the appropriate regional office. EDA generally accepts applications on a competitive and continuing basis to respond to market forces in Regional economies. The timing with which competitive investment opportunities arise, as determined by the criteria set forth in § 301.8, paired with the availability of funds in a given fiscal year, will affect EDA's ability to participate in any given Project. EDA will evaluate all applications using the criteria set forth in § 301.8 and will:

(1) Return the application to the applicant for specified deficiencies and suggest resubmission upon corrections; or

(2) Deny the application for specifically stated reasons and notify the applicant.

(b) PWEDA does not require nor does EDA provide an appeals process for denial of applications or EDA Investment Assistance.

[75 FR 4262, Jan. 27, 2010]

§ 301.8 Application evaluation criteria.

EDA will screen all applications for the feasibility of the budget presented and conformance with EDA statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the applicant to implement the proposed Project. EDA also will consider the degree to which an Investment in the proposed Project will satisfy one (1) or more of the following criteria:

(a) *Is market-based and results driven.* An Investment will capitalize on a Region's competitive strengths and will

positively move a Regional economic indicator measured and evaluated by EDA on a performance matrix system. These Regional economic indicators include measures such as an increased number of higher-skill, higher-wage jobs, increased tax revenue, or increased private sector investment resulting from an Investment.

(b) *Has strong organizational leadership.* An Investment will have strong leadership, relevant Project management experience and a significant commitment of human resources talent to ensure a Project's successful execution.

(c) *Advances productivity, innovation and entrepreneurship.* An Investment will embrace the principles of entrepreneurship, enhance Regional industry clusters and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

(d) *Looks beyond the immediate economic horizon, anticipates economic changes and diversifies the local and Regional economy.* An Investment will be part of an overarching, long-term Comprehensive Economic Development Strategy that enhances a Region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters or attracting new Regional economic drivers.

(e) *Demonstrates a high degree of local commitment.* An Investment will exhibit:

(1) High levels of local government or non-profit Matching Share and private sector leverage;

(2) Clear and unified leadership and support by local elected officials; and

(3) Strong cooperation among the business sector, relevant Regional partners and Federal, State and local governments.

(f) Other criteria as set forth in the applicable FFO.

[75 FR 4263, Jan. 27, 2010]

§ 301.9 Application selection criteria.

(a) EDA will review completed application materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO and other applicable federal statutes and regulations. From those applications

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that meet EDA's technical and legal requirements, EDA will select applications for further consideration based on the:

- (1) Availability of funds;
- (2) Competitiveness of the applications based on the criteria set forth in § 301.8; and
- (3) Funding priority considerations identified in the applicable FFO.

(b) EDA will endeavor to notify applicants regarding whether their applications are selected as soon as practicable.

[75 FR 4263, Jan. 27, 2010]

§ 301.10 Formal application requirements.

Each formal application for EDA Investment Assistance must:

(a) Include evidence of applicant eligibility (as set forth in § 301.2) and of economic distress (as set forth in § 301.3);

(b) Identify the sources of funds, both eligible federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (*see* the Matching Share requirements under § 301.5); and

(c) For construction Projects under parts 305 or 307 of this chapter, include a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements of the preceding sentence shall not apply to:

(1) Strategy Grants, as defined in § 307.3 of this chapter; and

(2) Projects located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

[75 FR 4263, Jan. 27, 2010]

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

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AUTHORITY: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; Department of Commerce Delegation Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§ 302.1 Environment.

EDA will undertake environmental reviews of Projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190; 42 U.S.C. 4321 *et seq.*, as implemented under 40 CFR chapter V) ("NEPA"), and all applicable Federal environmental statutes, regulations and Executive Orders. These authorities include the implementing regulations of NEPA requiring EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 CFR 1506.6(b). Depending on the Project's location, environmental information concerning specific Projects can be obtained from the Environmental Officer in the appropriate EDA regional office as listed in the applicable FFO.

§ 302.2 Procedures in disaster areas.

When non-statutory EDA administrative or procedural conditions for Investment Assistance awards under PWEDA cannot be met by an Eligible